

STATE OF MICHIGAN
COURT OF APPEALS

JEANNETTE GORDON,

Plaintiff-Appellant,

v

HENRY FORD HEALTH SYSTEM,

Defendant-Appellee.

UNPUBLISHED
November 18, 2003

No. 244596
WCAC
LC No. 00-121533

Before: Gage, P.J., and White and Cooper, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree that the WCAC did not err in concluding that an employee's profit from a business in which the employee is actively involved is not insulated from setoff simply because it is not denominated as "wages," and that in the instant case, the claimant was sufficiently active in the business to treat some of the profit as "wages." I would, however, remand for a determination regarding the appropriate amount of set-off.

The rationale for the WCAC's legal conclusion is well stated:

We believe the correct rule is that an employer may receive credit for the net earnings of an individual who is able to operate an independent business after injury without regard to whether those earnings are denominated wages or profits. To refuse to permit credit in such a situation would enrich the employee at the employer's expense simply because the employee chose to operate her own business rather than return to service with another employer.

It does not follow, however, that all the employee's net profits, whether properly attributed to the employee's labor or to the employee's investment, should be treated as "wages" subject to set-off. The WCAC may properly determine the value of the employee's service to her company and treat that as wages. This amount will not necessarily equal the net profit from the business, which will likely include items related to the employee's investment in the company, and profit on other employees' labor. I would remand for a determination of the value of plaintiff's service to the corporation, i.e., what the corporation would pay a worker for such services, or, stated differently, what plaintiff would be paid for the services in the marketplace.

/s/ Helene N. White

